

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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PLR-111525-11

Date:

July 13, 2011

TY:

LEGEND

Parent =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

x =

y =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Date7 =

Company
Official =

Tax
Professional =

Dear :

This letter responds to a letter dated March 1, 2011, requesting on behalf of Parent an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time to file an election under § 1.1502-32(b)(4) of the Income Tax Regulations to waive loss carryovers from Sub2 to the extent the loss carryovers exceed the maximum amount usable under sections 172 and 382, i.e., \$y (the "Election"). Additional information was received in subsequent correspondence dated May 11, 18, 24, 25, and June 8, 16, and July 6, 2011. The material information is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

FACTS

Parent is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return on a calendar year basis. Parent wholly-owns Sub1.

Before joining Parent's group, Sub2 acquired Sub3 by merger on Date2. Sub2 became a loss corporation within the meaning of section 382(k)(1) in the tax year that ended Date1.

On Date3, Parent formed Sub4. On Date4, Parent acquired Sub2 and Sub2's wholly-owned subsidiary (Sub3) by merging Sub4 into Sub2. On Date5, Sub3 liquidated into Sub2 and Sub2 merged into Sub1. Parent filed a consolidated Federal income tax return for the taxable year that ended Date6.

On Date4, Sub2 had total loss carryovers from separate return limitation years (within the meaning of § 1.1502-1(f)) of \$x that were limited by section 382. Pursuant to sections 172 and 382, the maximum amount of Sub2's loss carryovers that the group could use before all such carryovers expired was \$y. No election under § 1.1502-32(b)(4) to treat Sub2's losses as expiring immediately prior to Sub2 joining the Parent consolidated group was attached to the first consolidated return that included Sub2. Parent has represented that the Parent consolidated group is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time of the ruling request and for which the new position requires or permits a regulatory election for which relief is requested.

LAW

Section 1.1502-32(a)(1) provides rules for adjusting the basis of the stock of a subsidiary (S) owned by another member (M) to reflect S's distributions, items of income, gain, deduction, and loss taken into account for the period that S is a member of the consolidated group. Section 1.1502-32(b)(2) provides that M's basis in S's stock is adjusted to reflect, among other things, S's noncapital, nondeductible expenses. Section 1.1502-32(b)(3)(iii) provides that an expiring loss carryover attributable to S is a noncapital, nondeductible expense.

Section 1.1502-32(b)(4)(i) provides that if a corporation has a loss carryover from a separate return limitation year when it becomes a member of a consolidated group, the group may make an irrevocable election to treat all or any portion of the loss carryover as expiring for all Federal income tax purposes immediately before the corporation becomes a member of the consolidated group. Section 1.1502-32(b)(4)(iv) provides that the election for each member whose loss carryover is deemed to expire must be made in a separate statement filed with the consolidated group's income tax return for the year the corporation becomes a member.

The Election was due Date7, the due date (including extensions) of the group's consolidated income tax return for the year Sub2 became a member. For various

reasons, however, Parent failed to make the Election in a timely manner. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the election.

Section 301.9100-1(a) cites §§ 301.9100-1 through 301.9100-3 as providing the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections while § 301.9100-3 provides for extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides requests for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-32(b)(4)(iv)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service, and Parent reasonably relied on a qualified tax professional who failed to make or advise Parent to make the Election. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has established it acted reasonably and in good faith in failing to timely file the Election for Sub2, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent to amend the its consolidated federal income tax return for the taxable year that ended Date6 to include the Election as described above.

The 45-day extension of time is conditioned on the relief not resulting in the group having a lower consolidated tax liability (if any) in the aggregate for all years affected by the Election than the group would have had if the Election had been timely made (taking into account the time value of money).

We express no opinion with respect to whether Parent qualifies substantively to make the Election or the amount of any net operating losses of Sub2, the amount of any section 382 limitation, or the amount of net operating losses that could be utilized prior to their expiration. No opinion is expressed as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Parent and its representatives. However, all of the essential facts must be verified. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply. No opinion is expressed as to the consolidated group's tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Ken Cohen
Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Corporate)